

TITLE 174 VITAL RECORDS

CHAPTER 9 ORIGINAL AND DELAYED BIRTH CERTIFICATES

9-001 SCOPE: These regulations apply to the registration of the birth of newborn infants (as provided in Neb. Rev. Stat. § 71-604), for those persons who were born in Nebraska but whose births were not registered (as provided in Neb. Rev. Stat. §§ 71-617.01 to 71-617.15), and for amending such records (as provided in Neb. Rev. Stat. §§ 71-634 to 71-644).

9-002 DEFINITIONS

Applicant means a person requesting a certified copy of a vital record or a person seeking to view a record or the individual who is the subject of the vital record.

Certificate means the record of a vital event.

Certificate of Live Birth means the standard form for registering live births occurring in this state as prescribed by the Department, a copy of which is attached to these regulations as Attachment A and incorporated by this reference.

Department means the Nebraska Department of Health and Human Services Finance and Support.

Director means the Director of Finance and Support.

Registration means the filing of the Standard Certificate of Live Birth for a newborn infant with the Department or with a city-county or county health department.

9-003 REQUIREMENTS FOR REGISTRATION OF LIVE BIRTHS: A Certificate of Live Birth must be filed for each live birth which occurs in Nebraska.

9-003.01 Such certificate must be filed with the Department within five business days after the birth or if the birth occurred in Douglas or Lancaster County, it must be filed with the respective county health department. The county health department must file such certificates with the Department within ten days of the date of birth.

9-003.02 When a birth occurs in an institution or en route thereto, the person in charge of the institution or his or her authorized designee must obtain the personal data, prepare the certificate which must include the name, title, and address of the attendant, certify that the child was born alive at the place and time and on the date stated either by standard procedure or by an approved electronic process, and file the certificate. The physician or other person in attendance must provide the medical information required for the certificate within 72 hours after the birth.

9-003.03 When a birth occurs outside a hospital, institution, or facility, the Standard Certificate of Live Birth must be prepared and filed by one of the following –

9-003.03A The physician in attendance at or immediately after the birth;

9-003.03B The father, the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred; or

9-003.03C Any other person in attendance at or immediately after the birth.

9-004 COMPLETION OF CERTIFICATE: All items must be completed on the certificate of live birth unless there is disclosure or a satisfactory accounting for any omission.

9-004.01 If the mother was married at the time of either conception or birth or at anytime between conception and birth, and paternity has not been determined otherwise by a court of competent jurisdiction, then –

9-004.01A The name of the mother's husband is entered on the certificate as the father of the child unless one of the following occurs.

9-004.01A1 The mother and the mother's husband execute affidavits attesting that the husband is not the father of the child, in which case information about the father is omitted from the certificate. The affidavits must be individually notarized. The surname of the child is determined as provided in 174 NAC 9-004.03.

9-004.01A2 The mother executes an affidavit attesting that the husband is not the father and that the putative father is the father, the putative father executes an affidavit attesting that he is the father, and the husband executes an affidavit attesting that he is not the father. In such event, the putative father is shown as the father on the certificate. Each signature on the affidavits must be individually notarized. The surname of the child is determined as provided in 174 NAC 9-004.03.

9-004.01B If a court of competent jurisdiction has determined that the mother's husband is not the father of the child, the name of the father is entered on the certificate in accordance with the finding of the court. The child's surname is determined as provided in 174 NAC 9-004.03.

9-004.02 If the mother was not married at conception or birth of the child, or at any time between conception and birth, then –

9-004.02A The name of the father is not entered on the certificate unless:

9-004.02A1 The mother and the person named as the father consent in writing to the father's name being placed on the certificate; or

9-004.02A2 Paternity of the child has been determined by a court of competent jurisdiction. If such a determination has been made, then the name of the father is entered in accordance with the order.

9-004.02B If the father is not named on the certificate, no other information about the father is entered thereon.

9-004.03 The child's surname is the parents' prerogative, except that the Department will not accept a birth certificate with a child's surname that implies any obscene or objectionable words or abbreviations.

9-004.03A Appeals from the refusal of the Department to accept a birth certificate for filing because of the child's surname must be in accordance with 184 NAC 1.

9-005 ADDITIONS OR CHANGES TO A CERTIFICATE AFTER FILING WITH THE DEPARTMENT

9-005.01 If the mother is married but her husband is allegedly not the father, and the Certificate has been filed without the information pertaining to the alleged father, no information relating to the alleged biological father can be added unless paternity of the child has been determined by a court of competent jurisdiction.

9-005.02 If the certificate has been filed without the information pertaining to the biological father and the mother is unmarried, such information concerning the father is added –

9-005.02A Upon receipt of written acknowledgement and consent of the father and of the mother on a form provided by the Department, copies of which are Attachments B and C, incorporated in these regulations by this reference; or

9-005.02B Upon receipt of a certified copy of a court order from a court of competent jurisdiction showing paternity has been established; and

9-005.02C Upon receipt of the written request of the parent, guardian, or agency having legal custody of the child.

9-005.03 At the time of adding the biological father's name to the certificate, the surname of the child is determined as provided in 174 NAC 9-004.03.

9-006 AMENDMENT OF ORIGINAL BIRTH CERTIFICATES: Certificates of birth are amended as provided in 174 NAC 10.

9-006.01 Amendment of obvious errors, transposition of letters in words of common knowledge or omissions on birth certificates may be made by the Department within the first year after the date of birth –

9-006.01A Upon its own observation; or

9-006.01B Upon query; or

9-006.01C Upon request of a person with a direct and tangible interest in the certificate.

9-006.01D A notation as to the source of the information, the date of the amendment and the initials of the person making the change is made on the reverse side of the certificate.

9-006.01E The certificate is not marked "Amended."

9-006.02 The certificate is marked "Amended" for all amendments made during the first year, except as otherwise provide in Neb. Rev. Stat. §§ 71-630, 71-635 to 71-644, or 174 NAC 9-006.01. Amendments must be supported by –

9-006.02A An "Application for Amendment" form provided by the Department, a copy of which is Attachment D, incorporated in these regulations by this reference, which must be supported by affidavit and must set forth the information needed to identify the certificate, and list the incorrect data on the record and the correct data as it should appear on the original record; and

9-006.02B One item of documentary evidence supporting the amendment .

9-006.03 Amendments to birth certificates made one year or more after the event must be supported by –

9-006.03A An Application for Amendment form setting forth the information needed to identify the certificate, listing the incorrect data on the record and the correct data as it should appear on the original record; and

9-006.03B Two or more items of documentary evidence which support the alleged facts and which were established at least five years prior to the date of application for amendment or within seven years of the date of the event.

9-006.04 Amendments of given names only on birth certificates are as follows –

9-006.04A Until the registrant's first birthday, given names may be changed upon written request of –

9-006.04A1 Both parents;

9-006.04A2 The mother in the case of a child born out of wedlock or the death or incapacity of the father;

9-006.04A3 The father in the case of death or incapacity of the mother; or

9-006.04A4 The guardian or agency having legal custody of the registrant in the case of the death or incapacity of both parents.

9-006.04B After the first birthday and until the seventh birthday, the given name may be changed upon written request as required in 174 NAC 9-006.04A and submission of one or more items of documentary evidence to support the change.

9-006.05 Birth certificates filed without given names and amended after the seventh birthday must be supported by –

9-006.05A An Application for Amendment form setting forth the information needed to identify the original record, listing the incorrect information on the record and the correct information as it should appear on the record.

9-006.05B One item of documentary evidence to substantiate the name being added.

9-006.06 Amendments to birth certificates to which a legal change of name is being made must be supported by –

9-006.06A The Application for Amendment form setting forth the information needed to identify the original record, listing the incorrect information on the record and the correct information as it should appear on the record.

9-006.06B A certified copy of the court order changing the name.

9-006.07 Fees: Filing fees as provided in Neb. Rev. Stat. § 71-634 are charged for amendments to each record, except for amendments made in accordance with 174 NAC 9-006.01. In addition, a fee for each certified copy of an amended record is charged in accordance with Neb. Rev. Stat. § 71-612.

9-007 REQUIREMENTS FOR REGISTRATION OF CERTIFICATES OF DELAYED BIRTH REGISTRATION: A notarized Application and Affidavit for Delayed Birth Certificate, in a form provided by the Department, a copy of which is Attachment E, incorporated in these regulations by this reference, may be filed with the Department for any person born in Nebraska whose birth is not registered within one year after the date of birth.

9-007.01 Applicant must pay the statutory file search fee prescribed in Neb. Rev. Stat. § 71-612 to determine that such birth is not recorded. No file search fee is charged if the birth occurred before 1905.

9-007.02 Applicant may present to the Department some written proof, on a form provided by the Department, entitled "Certificate of Search," a copy of which is Attachment F,

incorporated in these regulations by this reference, or in a signed letter from the Department, stating that applicant's birth is not registered.

#### 9-008 DELAYED BIRTH CERTIFICATE--HOW ESTABLISHED

9-008.01 Applicant must be at least 18 years of age. If applicant is not yet 18 years of age, application may be made only by the applicant's mother, father, guardian, or attendant at birth.

9-008.02 The Application and Affidavit for a Delayed Birth Certificate must be accompanied by the application fee provided in Neb. Rev. Stat. § 71-617.15 for the filing of the Certificate of

Delayed Birth Registration, a copy of which is Attachment G, incorporated in these regulations by this reference. The file search fee set forth in 174 NAC 9-007.01 is also charged, unless the birth occurred before 1905. In addition, a fee for each certified copy of the new birth record is charged in accordance with Neb. Rev. Stat. § 71-612.

9-008.03 Each application for establishing a delayed birth registration must be accompanied by three independent supporting documents. Only one of these documents may be an Affidavit of Personal Recollection, a copy of which is Attachment H, incorporated in these regulations by this reference, from a person at least five years older than applicant and having personal knowledge of the facts at the time of birth.

9-008.04 Any evidence used must relate to the date and place of birth and at least one item of documentary evidence must correctly establish parentage.

9-008.05 Independent supporting records must include original records or certified or notarized copies of –

9-008.05A A recorded certificate of baptism performed under age four.

9-008.05B Insurance policy application personal history sheet.

9-008.05C Federal census record.

9-008.05D School census record.

9-008.05E Family Bible record when proved beyond a reasonable doubt that the record was established before the child reached age four.

9-008.05F Other evidence on file in the Department taken from other registrations. These documents may be the registrant's marriage record, birth certificate of another family member, or marriage record of the registrant's parents.

9-008.05G A record at least five years old or established within seven years of the date of birth, such as a physician's certificate or an affidavit taken from the records of the physician, hospital, or clinic records.

9-008.05H An affidavit of personal recollection from a parent or longtime acquaintance. The affidavit must include the full name of the person whose birth is being registered, the date and place of birth, and the basis of the affiant's knowledge of these facts.

9-008.05I A printed notice of birth.

9-008.05J A record from a birthday or baby book.

9-008.05K A school record.

9-008.05L A religious record.

9-009 DELAYED BIRTH CERTIFICATE – REFUSAL TO FILE – DENIAL: The Department will not register and issue a delayed certificate of birth if –

9-009.01 The applicant has failed to submit the minimum documentation required for the delayed registration; or

9-009.02 The Department has reasonable cause to question the validity or adequacy of –

9-009.02A The applicant's sworn statement; or

9-009.02B The documentary evidence due to conflicting evidence submitted; and

9-009.02C The deficiencies are not corrected.

9-009.03 The Department will advise the applicant of its decision denying registration on a form a copy of which is Attachment I, incorporated in these regulations by this reference, and of his or her right to appeal to the Director. Then if the applicant is not satisfied with the decision of the Director, the Department will advise him or her of the right to appeal to the county court as provided in Neb. Rev. Stat. § 71-617.08. The Director will inform the applicant on Attachment I of his or her decision and applicant's right to appeal as provided in Neb. Rev. Stat. § 71-617.08.

9-010 DELAYED BIRTH CERTIFICATE – PROCEDURE FOR APPEAL: If a delayed birth certificate is denied by the Department and the Director, a petition signed and sworn to by petitioner may be filed with the county court of Lancaster County, county court of the petitioner's residence, or county court of the county in which the birth is claimed to have occurred. Petition must be made on a form prescribed and furnished by the Department, a copy of which is Attachment J, incorporated in these regulations by this reference, and must allege –

9-010.01 That the person for whom a delayed certificate of birth is being sought was born in this state.

9-010.02 That no certificate of birth of such person can be found in the files of the Department from the information given.

9-010.03 That diligent efforts by the petitioner have failed to obtain evidence as required by Neb. Rev. Stat. §§ 71-617.05 and 71-617.06 that is considered acceptable to the Department.

9-010.04 That the Department has refused to register a delayed certificate of birth.

9-010.05 Other allegations by the petitioner may be listed.

9-011 DELAYED BIRTH CERTIFICATE – PETITION – HEARING FINDINGS – COURT ORDER

9-011.01 The petition form must be accompanied by a statement from the Director explaining on Attachment I why a delayed certificate of birth was not issued and registered, and all documentary evidence which was submitted to the Department in support of such registration.

9-011.02 After the petition is filed with the court, a time and place for a hearing will be set and a notice of ten days will be given to the Department of such hearing. The Director or an authorized representative may appear and testify in the proceeding.

9-011.03 If the court finds from the evidence presented that the person for whom a delayed certificate of birth is sought was born in this state, it will make findings as to the date and place of birth, parentage, and other findings as the case may require and the court will issue an order to establish a certificate of birth on a form prescribed and furnished by the Department on Attachment G.

9-011.04 The order will include the birth data, a description of the evidence presented, and the date of the court's action and will be forwarded by the clerk of the court to the Department no later than the tenth day of the calendar month following the month in which it was entered.

9-011.05 The order will be registered by the Department and will constitute the certificate of birth. The Department will certify on a delayed registration of birth that no other record of the birth is on file with the Department.

9-012 DELAYED BIRTH CERTIFICATE – DISMISSAL OF APPLICATION – NEW APPLICATION - REQUIREMENTS

9-012.01 An application which has not been actively pursued by the applicant within one year after receipt of application by the Department will be dismissed.

9-012.02 If the application is dismissed, the application fee will be returned by the Department to the applicant.

9-012.03 Submission of a new application is required and must be accompanied by the filing fees as provided in 174 NAC 9-008.02.